

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Jackson Parkway Partners, LP)	
	5-78-78-2.02)	
	Tax Year 2005)	
	 Jackson Bond, LP)	
	5-65-65-47.02)	Madison County
	Tax Year 2005)	
	 Madison Partners, LP)	
	64-64-74.00)	
	Tax Year 2005)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as set forth in exhibit 1.

Appeals have been filed on behalf of the property owners with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on January 17, 2006 in Jackson, Tennessee. The assessor of property, Frances Hunley, represented herself and was assisted by staff appraiser Sherri Marbury. The taxpayers were represented by registered agent L. Stephen Nelson.

The administrative judge has consolidated these appeals for disposition because of the common issues and representation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of three Low Income Housing Tax Credit (LIHTC) apartment complexes located in Jackson, Tennessee.

The taxpayers contended that subject property should be valued as set forth in exhibit 1. In support of this position, the taxpayers introduced into evidence the testimony and written analyses of Mr. Nelson. In each case, Mr. Nelson relied on a discounted cash flow analysis in arriving at his conclusion of value.

The assessor contended that subject property should be valued as set forth in exhibit 1. In support of this position, the assessor relied on discounted cash flow analyses prepared by A. Dean Lewis, CAE. In addition, Ms. Marbury introduced capitalization rate information sent to her by Mr. Lewis.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic

and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued as contended by the taxpayers.

Since the taxpayer is appealing from the determination of the Madison County Board of Equalization, the burden of proof in this matter falls on the taxpayer. *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that Mr. Nelson's written analyses and testimony were more than sufficient to establish prima facie cases in each instance. For the reasons discussed immediately below, the administrative judge finds that the assessor introduced insufficient evidence to rebut the taxpayers' prima facie cases.

The administrative judge finds that Mr. Lewis is currently the Real Property Manager for the Metropolitan Assessor of Property in Nashville. The administrative judge finds Mr. Lewis has appeared before him numerous times over the last twenty-one (21) years and would certainly qualify as an expert in the valuation of LIHTC properties.¹ However, the administrative judge finds Mr. Lewis was not present to testify or respond to Mr. Nelson's many legitimate questions.

The administrative judge finds that the State Board of Equalization routinely rejects appeals when the appraiser is not present to testify and the appraiser's report has been challenged. The basis for those decisions is typically the oft-cited ruling of the Assessment Appeals Commission in *TRW Koyo* (Monroe Co., Tax Years 1992-1994). In that case, the Commission refused to consider the taxpayer's appraisal report reasoning in pertinent part as follows:

The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .

* * *

. . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2.

The administrative judge finds that Mr. Lewis was not present to testify or undergo cross-examination. Accordingly, Mr. Lewis could not respond to Mr. Nelson's challenges

¹ Indeed, the Court of Appeals essentially adopted Mr. Lewis' appraisal in *Spring Hill, L.P. v. Tennessee State Board of Equalization*, No. M2001-02683 WL 23099679 (Tenn. Ct. App. December 31, 2003).

to his discount rate, terminal capitalization rate, and other relatively minor differences. The administrative judge finds Ms. Marbury was understandably unable to explain in any detail the bases for Mr. Lewis' disputed assumptions.

Based upon the foregoing, the administrative judge finds that the taxpayers established prima facie cases which were not rebutted by the assessor of property. In reaching this conclusion, the administrative judge recognizes that a different conclusion of value could have resulted had Mr. Lewis been available to testify and undergo cross-examination.

ORDER

It is therefore ORDERED that the values and assessments set forth in exhibit 2 are hereby adopted for tax year 2005.


It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 26th day of January, 2006.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. L. Stephen Nelson
Frances Hunley, Assessor of Property

EXHIBIT 1

<u>PROPERTY OWNER AND PARCEL I.D.</u>	<u>CURRENT APPRAISAL (\$)</u>	<u>TAXPAYER'S CONTENTED VALUE (\$)</u>	<u>ASSESSOR'S CONTENTED VALUE (\$)</u>
Jackson Parkway Partners, LP 5-78-78-2.02	5,576,400	3,829,000	4,470,000
Jackson Bond, LP 5-65-65-47.02	7,156,900	4,837,000	5,802,000
Madison Partners, LP 64-64-74.00	4,589,200	3,200,000	3,707,000

EXHIBIT 2

<u>PROPERTY OWNER AND PARCEL I.D.</u>	<u>LAND VALUE(\$)</u>	<u>IMPROVEMENT VALUE (\$)</u>	<u>TOTAL VALUE (\$)</u>	<u>ASSESSMENT (\$)</u>
Jackson Parkway Partners, LP 5-78-78-2.02	168,500	3,660,500	3,829,000	1,531,600
Jackson Bond, LP 5-65-65-47.02	315,100	4,521,900	4,837,000	1,934,800
Madison Partners, LP 64-64-74.00	129,600	3,070,400	3,200,000	1,280,000